

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE 12/11/2000	NUMBER 03.03.140
	SUPERSEDES DOM 2000-33; DOM 2000-33A	
SUBJECT PROHIBITED CONDUCT IN FACILITIES HOUSING FEMALE PRISONERS	AUTHORITY USA v Department of Corrections; Nunn v Department of Corrections	
	ACA STANDARDS NONE	
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#### POLICY STATEMENT:

The Department shall take affirmative steps to guard against sexual harassment and sexual misconduct between prisoners and staff.

#### RELATED POLICIES:

PD 01.01.140 Internal Affairs Section  
PD 02.03.100 Employee Discipline

#### POLICY:

#### DEFINITIONS

- A. Overfamiliarity - Conduct between an employee and a prisoner which has or is likely to result in intimacy or a close personal association, or conduct that is contrary to the good order of the facility.
- B. Retaliation - Harmful action, or threat of such action, taken by staff against a prisoner because of that prisoner's resistance to, complaint regarding, or cooperation in an investigation of, sexual misconduct, sexual harassment or other conduct prohibited by this policy directive.
- C. Sexual Harassment - Staff engaging in sexual advances, requests for sexual favors, and other offensive verbal or physical conduct, including communications, of a sexual nature with a prisoner. This includes verbal conduct of a gender-related nature intended to humiliate, harass, degrade or arouse.
- D. Sexual Misconduct - Staff engaging in, attempting to engage in, or aiding and abetting any of the following:
  - 1. A sexual act with any prisoner.
  - 2. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.
  - 3. Prohibited physical contact, including fondling or kissing.
  - 4. Indecent exposure or other indecent sexual behavior by staff in the presence of a prisoner.

#### GENERAL INFORMATION

- E. All Department employees are subject to discipline for work rule violations. Work rule violations include sexual harassment, sexual misconduct, overfamiliarity and retaliation. Violation of an employee work rule by any employee shall result in discipline pursuant to PD 02.03.100 "Employee Discipline".
- F. This policy directive sets forth requirements contained within the settlement agreements entered into in two lawsuits involving female prisoners (USA v Michigan and Nunn v MDOC), even if already

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addressed in other policy directives. However, where in conflict with another policy directive, this policy directive shall control for female prisoners and staff at affected facilities.

- G. This policy only applies to female prisoners who are housed at facilities affected by the settlement agreements; i.e., CFA facilities and Field Operations Administration (FOA) corrections centers and Technical Rule Violation centers housing female prisoners. For purposes of this policy, "facility" means only those facilities unless otherwise indicated.

#### SPECIAL ADMINISTRATOR

- H. The Special Administrator for Female Offender Programs shall serve as Special Administrator for the USA v Michigan and Nunn v MDOC settlement agreements and shall oversee and monitor compliance with the terms of those settlement agreements. The Special Administrator shall report to the Director, and shall have authority to cross administration lines to ensure compliance with all aspects of the settlement agreements.
- I. The Special Administrator shall maintain a brochure for female prisoners on sexual assault/abuse prevention and intervention and ensure that it includes all information required by the settlement agreements. The Special Administrator also shall ensure that a prisoner education program specific to the topics addressed in the settlement agreements is maintained, and is included in the orientation program offered at the Scott Correctional Facility - Reception Center pursuant to PD 04.01.105 "Reception Center Services". All written material given to prisoners shall be available in Spanish and English. Reasonable measures shall be taken to ensure that other non-English speaking prisoners receive the same information.
- J. Prisoners in CFA and FOA facilities may write to or speak with the Special Administrator in confidence about allegations of sexual misconduct or other conduct prohibited by this policy directive. The Special Administrator may request a criminal or administrative investigation in response to allegations that staff engaged in conduct prohibited by this policy directive. The Special Administrator shall share with the facility head and his/her supervisors, as appropriate, allegations of such misconduct and the status of any resulting investigations.
- K. In conjunction with the Manager of the Training Section of the Office of Personnel and Labor Relations, the Special Administrator shall ensure that new employee and in-service training modules incorporate as necessary training requirements set forth in the settlement agreements. Staff, including investigators and facility administrators, shall attend training as required.

#### SCREENING FACILITY EMPLOYEES

- L. PD 02.06.111 "Employment Screening and Evaluation" requires that a criminal history and outstanding warrant check be run through the Law Enforcement Information Network (LEIN) on applicants for employment who are not currently active Department employees. PD 02.06.111 also requires that such applicants be fingerprinted and, in the case of applicants who are not currently active State of Michigan employees, be tested for the use of a controlled substance as set forth in PD 02.06.110 "Controlled Substance Testing of New Employee Applicants". It also requires that a currently active state employee who is an applicant for a "test designated position" be tested for the use of a controlled substance in accordance with Department of Civil Service Rule 1-7 and applicable collective bargaining unit agreements. The personnel officers for CFA facilities and the FOA Deputy Director for FOA facilities shall ensure that the screening criteria also are used to screen currently active Department employees who were not previously employed at a facility.
- M. In addition to the criteria identified above, the personnel officers for CFA facilities and the FOA Deputy Director for FOA facilities shall ensure that pre-employment screening at these facilities includes checking all applicants' employment for the preceding five years and checking LEIN for any filed personal protective orders for domestic violence. They also shall ensure that pre-employment screening includes checking to determine if the applicant has ever been accused of sexual misconduct,

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sexual harassment or retaliation when previously employed by the Department or in any correctional setting (e.g., jail; prison in another state). In addition, the applicants' military discharge status, if applicable, shall be checked.

- N. Pursuant to PD 02.06.111 "Employment Screening and Evaluation", an offer of employment shall not be made to an applicant for employment who was employed formerly by the Department and was dismissed from employment for any reason, who resigned while under investigation or while discipline was pending for alleged misconduct, or who accepted a waived rights leave of absence, without the approval of the Personnel Director, the appropriate Deputy Director and the Director. Approval shall not be granted to rehire a former employee who resigned from a position at a CFA or FOA facility in lieu of discipline as a result of an investigation for conduct prohibited by this policy directive or for failing to report conduct in violation of this policy directive, or who resigned during an investigation of allegations of conduct prohibited by this policy directive which ultimately results in a sustained finding.
- O. Every five years after the initial hire date, a criminal history and outstanding warrant check shall be run through LEIN on all Department employees who work at a facility. This shall include a check for any filed personal protective orders for domestic violence. The FOA and CFA Deputy Directors, in conjunction with the Administrator of the Office of Audit, Internal Affairs and Litigation, shall coordinate this process and the retention of all LEIN documentation, including the LEIN print-outs. Information obtained through the LEIN is confidential, and shall be available only to the Special Administrator, the FOA Deputy Director, and staff in the Office of Audit, Internal Affairs and Litigation involved in the LEIN process for purposes authorized by this policy directive, and as otherwise provided for by Department policy.
- P. The screening required in Paragraphs L through O also is required for volunteers and full-time contractual staff, including employees of the Department of Community Health (DCH) and health care staff assigned to a CFA or FOA facility, who have contact with female prisoners as a regular and routine part of their employment at the facility. Wardens and the FOA Deputy Director, as appropriate, shall ensure this screening is conducted for volunteers at their respective facilities. The Administrator of the Bureau of Health Care Services shall ensure this screening is conducted for contractual health care staff. The Bureau of Forensic Mental Health Services (BFMHS), DCH, is responsible for screening DCH employees employed at a CFA facility.
- Q. The FOA and CFA Deputy Directors shall ensure that procedures are developed and maintained for employing and assigning staff to positions which have prisoner contact. The procedures shall take into account the results of the employment screening requirements set forth above.

#### PRISONER ALLEGATIONS OF PROHIBITED CONDUCT

- R. Prisoners in CFA and FOA facilities may report allegations of sexual misconduct and other conduct in violation of this policy directive to any employee, including the Special Administrator. This may be done verbally or in writing, including via the grievance process.
- S. To facilitate reporting allegations of sexual misconduct, sexual harassment or retaliation, there shall be at least one secure locked box in each facility in which prisoners may deposit complaints alleging such conduct. Only Inspectors, Wardens and corrections center supervisors at the facility at which the box is located, or their designees if they are not at the facility, shall have access to the contents of the box. They shall review the complaints deposited into the box daily and, within four business days, confirm receipt with the prisoner who made the complaint.
- T. PD 04.06.180 "Mental Health Services" requires that all CFA prisoners in need of mental health services be identified in a timely manner, have reasonable access to care, and be afforded continuity of care, including aftercare planning and follow-up as indicated. Such services shall be offered to any prisoner alleged to have been subject to sexual misconduct and to any prisoner found by the Department to have made a credible claim of sexual harassment, consistent with other requirements set forth in PD 04.06.180.

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- U. Prisoners who make accusations of misconduct against employees, including sexual misconduct, sexual harassment or retaliation, which are investigated and determined to be unfounded shall be charged with the major misconduct of "Interference with the Administration of Rules", with approval of the CFA or FOA Deputy Director, as appropriate, or the Director. Hearings shall be conducted in accordance with PD 03.03.105 "Prisoner Discipline".

#### INVESTIGATION OF ALLEGATIONS OF PROHIBITED CONDUCT

- V. All allegations of conduct prohibited by this policy shall be investigated in a timely, complete, thorough and uniform manner, consistent with generally accepted principles pertaining to corrections investigations. All investigations shall be documented. In conjunction with the Michigan State Police, the Office of Internal Affairs or inspectors designated by that Office shall conduct investigations into allegations of sexual misconduct. All other investigations of conduct prohibited by this policy shall be conducted by inspectors or persons who have completed the Department's sexual harassment training program, or equivalent training regarding conducting investigations. This does not limit the scope of investigations conducted by the Office of Internal Affairs pursuant to PD 01.01.140 "Internal Affairs Section".
- W. Investigators shall personally interview the alleged victim, the alleged perpetrator and sufficient witnesses to establish the facts. The investigation shall include determining if there were any prior allegations of conduct prohibited by this policy directive by the accused and, if so, the results of the investigation and what, if any, disciplinary action was taken. The investigation also shall include reviewing prior allegations of such conduct made by the prisoner.
- X. Prisoners in a CFA facility who have reported sexual misconduct shall be provided the opportunity to speak with a Department of Corrections or Department of Community Health mental health professional trained in sexual assault and crisis intervention prior to being interviewed by a Department investigator. Prisoners in an FOA facility shall be permitted to speak with a counselor, if available in the local community, prior to the interview, if requested. The prisoner shall be permitted to have the mental health professional or counselor present when personally interviewed as part of the investigation.
- Y. Allegations of sexual misconduct that, if true, would constitute a criminal act shall be referred to the Michigan State Police (MSP) for investigation. Supervisory staff and investigators shall proceed with the investigation in accordance with PD 01.01.140 "Internal Affairs Section" and PD 02.03.100 "Employee Discipline" regardless of whether the MSP referral results in criminal prosecution.
- Z. An investigation of sexual misconduct, sexual harassment or retaliation also shall not be closed simply due to the resignation, transfer or termination of the accused staff person. Supervisory staff and investigators shall proceed with the investigation in accordance with PD 01.01.140 "Internal Affairs Section" and PD 02.03.100 "Employee Discipline".
- AA. Staff accused of sexual misconduct shall be removed from contact with prisoners pending the outcome of the investigation. Staff who are accused of, witnessed or have personal knowledge of sexual misconduct, sexual harassment, or retaliation and refuse to cooperate with an investigation shall be subject to discipline, up to and including termination, in accordance with PD 02.03.100 "Employee Discipline". Staff who aid in or assist in the commission of gender-based misconduct also shall be subject to disciplinary action, in accordance with PD 02.03.100.

#### CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIONS

- BB. Reasonable steps shall be taken to ensure the confidentiality of reports of sexual misconduct and other conduct prohibited by this policy, and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff and prisoners who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 02.03.100 "Employee Discipline" and PD 03.03.105 "Prisoner Discipline", as appropriate.

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However, this does not preclude prisoners from discussing such matters with their attorneys, to seek treatment or to ensure their own safety. It also does not preclude staff from discussing such matters as otherwise required by this or any other policy directive.

#### TRACKING ALLEGATIONS OF PROHIBITED CONDUCT

- CC. Wardens of CFA facilities and the FOA Deputy Director for FOA facilities shall ensure that information on allegations of sexual misconduct and other conduct prohibited by this policy directive if entered into the Department's computerized tracking system. This shall include information on allegations that were sustained, not sustained or determined to be unfounded. Although information on allegations that were not sustained or were determined to be unfounded is maintained on the tracking system, such information shall not be retained in an employee's personnel file or used for any purpose not authorized by this or any other policy directive. The tracking system shall be searchable by prisoner and staff name, the type of prohibited behavior alleged, the date when the alleged incident occurred and the facility, location and shift where the alleged incident occurred. Only staff designated by the Director shall have access to the information. The tracking system shall be queried prior to rehiring a staff person who was previously employed at a CFA or FOA facility.
- DD. The Special Administrator shall ensure that a search of the tracking system is conducted at least quarterly to identify any staff person who has been the subject of more than two allegations of sexual misconduct, sexual harassment or retaliation within the preceding five years. The Warden or FOA Deputy Director, in conjunction with the Special Administrator, shall determine the appropriate action to be taken against identified staff. Actions that may be considered include, but are not limited to, having the staff person meet with supervisory staff, referring the staff person to an employee assistance program, requiring the staff person to attend additional training or reassigning the staff person.

#### RETALIATION REVIEW COMMITTEE - CFA ONLY

- EE. There shall be a Retaliation Review Committee at each CFA facility comprised of the Grievance Coordinator and either an Assistant Deputy Warden, Deputy Warden or Inspector, as determined by the Warden. The Committee shall be responsible for investigating allegations made by prisoners that they are being retaliated against as a result of reporting sexual misconduct or sexual harassment. The Committee shall begin investigating such allegations within five business day after receipt of the complaint. The investigation shall include reviewing major and minor misconduct reports issued against the prisoner.
- FF. The Committee shall report the findings of each investigation conducted, including an explanation of the factual basis for the finding, to the Warden and the Special Administrator within ten days business day after receipt of the complaint, unless a one-time extension is granted by the Warden in writing. If granted, the extension shall not exceed an additional two weeks. Factors which may be considered by the Committee in making its findings include, but are not limited to, the following:
1. The connections between the staff who issued a misconduct and the staff accused of the sexual misconduct or sexual harassment, and the amount of time between the issuance of the misconduct and the allegation of retaliation.
  2. Any evidence submitted by the prisoner in support of her allegation.
  3. Any critical incident reports, grievances, letters or "kites", or other written documentation relating to the prisoner's report of sexual misconduct or sexual harassment.
  4. Any prior allegations by the prisoner of retaliation.
  5. The prisoner's prior misconduct history.
- GG. The Committee's findings shall be purely advisory. However, if the Warden determines that sufficient

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evidence has been presented to support the prisoner's allegation, s/he may take action as deemed appropriate, in accordance with Department policy and rules. In the case of a major misconduct, this may include pulling the misconduct report before it is heard by the hearing officer, presenting the information for consideration by the hearing officer at the hearing or requesting a rehearing by the Hearings Administrator if the prisoner was found guilty of the misconduct. Such actions shall be taken in accordance with PD 03.03.105 "Prisoner Discipline".

HH. A copy of the Committee's findings shall be provided to the prisoner who made the initial complaint.

#### ADDITIONAL MEASURES TO MINIMIZE FUTURE PROHIBITED CONDUCT

- II. Each Warden of a CFA facility and the FOA Deputy Director shall ensure that an operating procedure is maintained that restricts male staff from being alone with female prisoners in one-on-one situations in areas of the facility that are not clearly visible to other prisoners or staff. This does not apply if there is an emergency situation, when providing medical care or counseling, when conducting interviews during an investigation and when reporting sexual misconduct, sexual harassment or retaliation.
- JJ. Each Warden of a CFA facility and the FOA Deputy Director shall take reasonable measures to eliminate prisoner access to secluded areas of the facility. This shall include maintaining a key receipt system which identifies employees assigned to receive keys to these areas. In CFA, this also shall include conducting rounds of such areas at intervals sufficient to guard against sexual misconduct and other conduct prohibited by this policy directive.
- KK. Each CFA and FOA facility shall have one or more location where prisoners may dress, shower and use the toilet out of sight of male staff.
- LL. Absent compelling circumstances or reasonable suspicion of unauthorized activity/rule violations, male staff shall verbally announce their presence prior to entering an area of the facility where prisoners could be in a state of undress. In CFA facilities, Wardens shall ensure written instructions are developed and available to staff identifying the areas within the facility where this requirement applies and how the announcement is to be given. These instructions shall be available for prisoner review in the facility library.
- MM. Except in an emergency or where there is a reasonable suspicion that the prisoner is in possession of contraband, pat down and clothed body searches of female prisoners shall be conducted only by female staff.
- NN. Whenever a prisoner has been transported to receive medical care, male officers shall not remain in the examination room when the prisoner is fully or partially nude, except in an emergency situation or upon request of the health care professional who will be conducting the examination.

#### CFA Facilities Only

- OO. As part of the initial assessment conducted pursuant to PD 04.01.105 "Reception Center Services", each prisoner shall be screened to identify any history of physical or sexual abuse. The results of this screening shall be documented in the prisoner's health record. When necessary, prisoners shall be referred for mental health services in accordance with PD 04.06.180 "Mental Health Services".
- PP. Male staff must log in whenever they enter an area of the facility where a log is maintained, including a housing unit. Any failure to log in shall be reported immediately to supervisory staff.
- QQ. The Special Administrator, the Warden and designees shall conduct periodic confidential random interviews of prisoners regarding sexual misconduct, sexual harassment, overfamiliarity and retaliation to determine their understanding of Department policy on these issues. In addition, the Special Administrator, Warden and designees shall conduct confidential random exit interviews of prisoners. In order to initiate or assist in an investigation, relevant information obtained in these interviews may be

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shared with Department investigators and managerial staff. Allegations of misconduct shall be shared with the Warden.

#### MONITORING REQUIREMENTS

- RR. The Personnel Director, Office of Personnel and Labor Relations, A&P, shall monitor the quality of the pre-employment hiring process required by this policy. The Special Administrator shall monitor the quality of staff training and prisoner education programs required by this policy directive. The Personnel Director and Special Administrator shall report their findings and recommendations to the Director at least annually.

#### OPERATING PROCEDURES

- SS. The CFA and FOA Deputy Directors shall ensure that within 60 days of its effective date, procedures necessary to implement this policy directive are developed.

#### AUDIT ELEMENTS

- TT. Due to the role of the Special Administrator, there are no audit elements for this policy directive.

BM:OPH:12/06/00